

Post-it Fax Note

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Date	7-7	# of pages	7
To	Ralph Gibson		
From	Roger Powers		
Co./Dept.	Co. Nor. Sec. Corp		
Phone #	Phone # 404/529-2326		
Fax #	Fax # 901/576-8149		



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THIS AGREEMENT, made between

SOUTHERN RAILWAY COMPANY, a Virginia corporation, its successors and assigns, hereinafter styled Railroad, party of the first part; and

CARRIER CORPORATION, a Delaware corporation, Carrier Air Conditioning Co. Division, hereinafter styled Industry, party of the second part;

W I T N E S S E T H:

THAT the PARTIES HERETO agree as follows:

1. Railroad will operate, to afford Industry facilities for the receipt and shipment of carload freights of Industry over the lines of Railroad in accordance with lawfully published tariffs, an industrial track 1574 feet, more or less, in length, at COLLIERVILLE, Tennessee, located substantially as shown in red on print of Drawing No. TC-73-0113-R1, dated November 5, 1973, revised October 10, 1975, annexed hereto and made a part hereof; said track being hereinafter referred to as "track" or "industrial track".

Railroad, moreover, hereby consents to the construction, maintenance and use by Industry of a tank car unloading tower (hereinafter referred to as "Facility") adjacent to said industrial track on the westerly side thereof, at the location indicated on said annexed print, subject to the terms and conditions of this agreement.

2. Industry will acquire and hereby guarantees to Railroad full right and lawful authority to maintain and operate any portion of said industrial track which may be located beyond the limits of the right of way of Railroad, or upon or across any public highway.

3. Title to the rails, materials and fixtures in the portion of said industrial track extending from survey station 7 + 20 thereon to the end thereof is vested in Industry, and title to that portion of said industrial track extending from switch point thereof to said survey station 7 + 20 thereon is and shall remain vested in Railroad. Railroad shall have entire control of said track and the operation thereof, and may use the same as well for the business of third persons, not parties hereto, as of that of Industry; provided that such use of said track for the benefit of third persons shall not unreasonably interfere with the business of Industry.

4. Industry will, at the cost and expense of Industry, maintain the portion of said industrial track owned by Industry, as aforesaid, in good condition and repair and in all respects in accordance with the reasonable requirements of Railroad looking to the safe and convenient operation of engines and cars on said track; it being understood that Railroad will maintain the portion of said track owned by Railroad, as aforesaid. Upon request of Industry, Railroad will assist Industry in locating a qualified railroad contrac-

RAILROAD WILL MAINTAIN THE PORTION OF SAID TRACK OWNED BY RAILROAD, AS AFORESAID. PAGE 01-02 &
request of Industry, Railroad will assist Industry in locating a qualified railroad contrac-
tor to perform, for the account of Industry, that portion of the maintenance work for which
Industry is responsible under this paragraph; provided, that Railroad shall not be respon-
sible for the performance of any such contractor and nothing done by Railroad in assisting
Industry in locating and arranging for such contractor to perform such maintenance work
shall relieve Industry of Industry's primary obligation to maintain its portion of said
track.

5. Industry agrees to observe and be bound by the rules of Railroad for standard
clearances; that is to say, Industry agrees to maintain and preserve an overhead space of
22 feet measured perpendicularly from the top of the rail (except that overhead clearance
where wire lines extend over said track shall be such as may be prescribed by Railroad)
and a space 20 feet in width, measured 10 feet on each side from the center line of said
track (except that side clearances where platforms, and doorway for track entering build-
ing, are involved shall be such as may be prescribed by Railroad), provided, however,

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that all side clearances for said track must be increased one and one-half (1-1/2) inches for every degree of curvature therein, which space shall be kept clear of any obstruction whatever including, but not limited to, all structures, facilities or property of Industry which are or may be placed or erected above or parallel to said track.

6. The liability of the parties to this agreement, as between themselves, for death, personal injury and property loss and damage, which occurs by reason of, or arises out of, or is incidental to, the construction, operation, maintenance, use, presence or removal of the track covered by this agreement and the right of way therefor, shall be determined in accordance with the following provisions:

(a) Industry shall be solely responsible for, and shall bear all cost, expense and liability resulting from loss of or damage to property by fire;

(b) Industry shall be solely responsible for, and shall bear all cost, expense and liability resulting from death; personal injury, and loss and damage to property, arising out of, in connection with, or in any way incidental to the loading or unloading, into or from rail tank cars, or the handling, storage or transmission in connection with such loading or unloading, of hazardous or flammable commodities (as defined in the regulations of the Department of Transportation), whether or not negligence on the part of Railroad may have caused or contributed to such death, injury, or damage;

(c) Industry shall be solely responsible for, and shall bear all cost, expense and liability resulting from death, personal injury, and loss and damage to property, caused solely by the negligence of Industry, or of the agents or employees of Industry, or by the violation by Industry or its agents or employees of the terms of this agreement, or by the negligence of Industry concurring with the negligence of a third party;

(d) Except as provided in subparagraphs (a) and (b) above, Railroad shall be solely responsible for and shall bear all cost, expense and liability resulting from death, personal injury, and property loss and damage, caused solely by the negligence of Railroad, or of the agents or employees of Railroad, or by the negligence of Railroad concurring with the negligence of a third party;

(e) Except as provided in subparagraphs (a) and (b) above, Railroad and Industry shall be jointly responsible for and shall bear equally all cost, expense and liability resulting from death, personal injury, and property loss and damage, caused by their joint and concurring negligence;

(f) Notwithstanding anything contained in this agreement, and irrespective of the sole, joint, or concurring negligence of Railroad, Industry shall assume sole responsibility for and shall indemnify and save harmless and defend Railroad from and against all claims. Actions or legal proceedings &

assume sole responsibility for and shall indemnify and save harmless and defend Railroad from and against all claims, actions or legal proceedings arising, in whole or in part, from the failure of Industry to comply with any clearance requirements set forth in this agreement. In this connection it is specifically understood that knowledge on the part of Railroad of a violation of any such clearance requirements, whether such knowledge is actual or implied, shall not constitute a waiver and shall not relieve Industry of its obligations to indemnify Railroad for losses and claims resulting from any such violation; PAGE 02-02 &

(g) Each of the parties hereto, for the liability imposed upon such party by this agreement, shall indemnify and hold entirely harmless the

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other party hereto;

(h) Knowledge on the part of Railroad of a continuing violation of the terms of this agreement by Industry shall constitute neither negligence nor acquiescence on the part of Railroad, and shall in no event relieve Industry of any of the responsibilities imposed upon Industry hereunder; and

(i) The term "Railroad", as used in this paragraph, shall include not only Railroad specifically named in the first sentence of this agreement, but also all of the corporate affiliates of Railroad so named.

7. Industry will, at the expense of Industry, for the further protection of Railroad, take out, and at all times during the life of this agreement maintain in full force and effect, a policy of general liability insurance including contractual liability insurance specifically covering the liabilities to which Industry is or may be subjected by the terms of this agreement, by such good and solvent insurance company as may be satisfactory to Railroad and in such form as may be approved by it, underwriting for the benefit of Industry the risk of loss of life, personal injury or property loss or damage resulting from the construction, maintenance or operation of said industrial track, as well as such loss, injury or damage caused by, or resulting from or arising by reason of or in connection with, but not by way of limitation, the movement and storage of tank cars on said industrial track; said insurance policy to be in the amount of \$1,500,000 (combined single limit for bodily injury and/or property damage liability) for each occurrence. Industry will furnish to the Director of Insurance of Railroad certificates evidencing such insurance, satisfactory to Railroad. The furnishing by Industry of such evidence and acceptance of the same by Railroad is not intended to and shall not reduce, limit, affect or modify the primary obligations and liabilities of Industry under any other provisions of this agreement.

8. Cars shall not be moved to or from said industrial track except by Railroad. Industry will provide and furnish, at its own cost and expense, and keep ready for use at all times in a convenient place, a metal sign at least 12 X 15 inches, reading "STOP"-- "Tank Car Connected", the letters in the word "STOP" to be at least four inches high, and the letters in the words "Tank Car Connected" at least two inches high, the color of which shall be white with blue background, which said sign shall be placed by Industry in a conspicuous place on track or car when a car is connected with hose or pipe and maintained in such position until the car is disconnected; it being understood that (a) tank cars must not be left connected to hose or pipe except when loading or unloading is going on and while a competent man is present and in charge, (b) unloading from bottom of cars is prohibited and only dome unloading will be permitted, and (c) brakes must be set and wheels blocked on all cars being unloaded. Industry agrees to keep the premises around and about said track clear and free of waste paper, trash or any other inflammable or unsightly matter deposited by it or its employees.

9. Notwithstanding any other provision of this agreement, Industry will, moreover, indemnify and save harmless Railroad, and any associated, controlled, or affiliated corporation, from and against any loss of or damage to any cars of Railroad or cars of other railroad companies in use by Railroad, while being moved by Industry upon said industrial track, and from and against any loss of life, personal injury and any property loss or damage which may occur during such movement.

or cars of other railroad companies in use by Railroad, while being moved by Industry, upon said industrial track, and from and against any loss of life, personal injury and any property loss or damage which may occur during or which result from the movement of said cars by Industry, as aforementioned. PAGE 03-02 &

10. All carload shipments consigned to Industry for delivery on said industrial track shall be deemed to have been fully and completely delivered as soon as the car containing such shipment shall have been placed on the industrial track and detached from the engine or train by which it was moved. Railroad shall not be liable as common carrier, nor as bailee, for any property loaded into any car on said industrial track until said car is attached or coupled to the engine or train by which it is to be moved from said industrial track towards its destination, or until a bill of lading shall have been issued to Industry therefor, and until said car is so attached or coupled up, or a bill of lading is issued therefor, the said car and its contents shall be deemed and held to be in the possession of Industry so far as liability therefor is concerned.

11. Notwithstanding any other provision hereof, Industry agrees to comply entirely at its own expense with all requirements imposed by any governmental agency, state, federal

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or local, with respect to clearances, walkways, specification and condition or maintenance of that part of the subject track which is owned or maintained by Industry.

12. The provisions of this agreement shall inure to the benefit of, and shall be binding upon, any other railroad company now operating or which may hereafter operate over or upon the track covered by this agreement. This contract is not assignable or transferable by Industry except with the written consent of Railroad, signed by an executive officer.

13. Industry will construct said Facility and at all times thereafter during the life of this agreement maintain the same, at its sole cost and expense, in strict accord with plans and specifications shown and noted on said annexed print and such other specifications as may be prescribed by Railroad, and, moreover, in all respects in accordance with the requirements of Railroad; it being understood that the work of constructing and maintaining said Facility shall, at all times during its progress, be subject to the inspection and supervision, and upon its completion to the approval, of the Superintendent of Railroad or his duly authorized representative.

14. Industry will maintain said Facility at all times in such condition that said Facility or the use thereof by Industry, shall not be or become an obstruction to, or interfere with, the safe and proper maintenance of said industrial track, or railroad operations upon said track, or endanger life or limb of employees of Railroad or other persons on or about said track; it being specifically understood and agreed by Industry that the retractable portion of said Facility shall be maintained in a vertical position when the same is not in use to preserve the clearances on the westerly side of said track indicated on said annexed print.

15. Said Facility shall be constructed and maintained at the location indicated upon said annexed print, and shall not be relocated without the consent, in writing, of Railroad.

16. Industry accepts the privilege granted in the second paragraph of Article 1 of this agreement with full cognizance of the risk of loss of life, personal injury or property loss or damage which may result from the construction, maintenance, use or presence of said Facility adjacent to said track or railroad operations in the vicinity thereof, and agrees that neither Railroad nor any associated, controlled, or affiliated corporation shall have any responsibility in connection therewith but that Industry will exercise said privilege solely at the risk of Industry and will, notwithstanding any other provisions of this agreement, indemnify and save harmless Railroad and any associated, controlled, or affiliated corporation from and against all such loss, injury or damage, whether resulting from negligence of Railroad or otherwise.

17. This agreement is intended to, and hereby does, supersede and cancel that certain written agreement between Railroad and Carrier Corporation, Day & Night Manufacturing Company and The Paine Corporation, dated July 1, 1914.

17. This agreement is intended to, and hereby does, supersede and cancel that certain written agreement between Railroad and Carrier Corporation, Day & Night Manufacturing Company and The Payne Company divisions, dated January 2, 1969, concerning construction, operation and maintenance of an industrial track, at Collierville, Tennessee, Industry hereby representing to Railroad that it is successor in interest to said Carrier Corporation. Day & Night Manufacturing Company and The Payne Company divisions. PAGE 04-02 3

18. This agreement shall be effective as of the 3rd day of December, 1973. Either party hereto may terminate this agreement by sixty (60) days' written notice to the other of election so to do. Upon the expiration of the time limited by such notice this agreement shall terminate, whereupon Railroad may discontinue the operation of said industrial track and remove any portion of Railroad therefrom. Notwithstanding

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any other provision hereof, if Industry shall fail to comply with any of its covenants in this agreement contained, Railroad shall have the right forthwith to discontinue operation of said track, without liability to Industry, until Industry shall have complied with all of said covenants.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate, each part being an original, as of this 26th day of November, 19 76.

In presence of:

As to Railroad.

SOUTHERN RAILWAY COMPANY,
By

Vice President.

In presence of:

As to Industry.

CARRIER AIR CONDITIONING CO.,
Division of Carrier Corporation,
By

President.

CARRIER CORPORATION

By

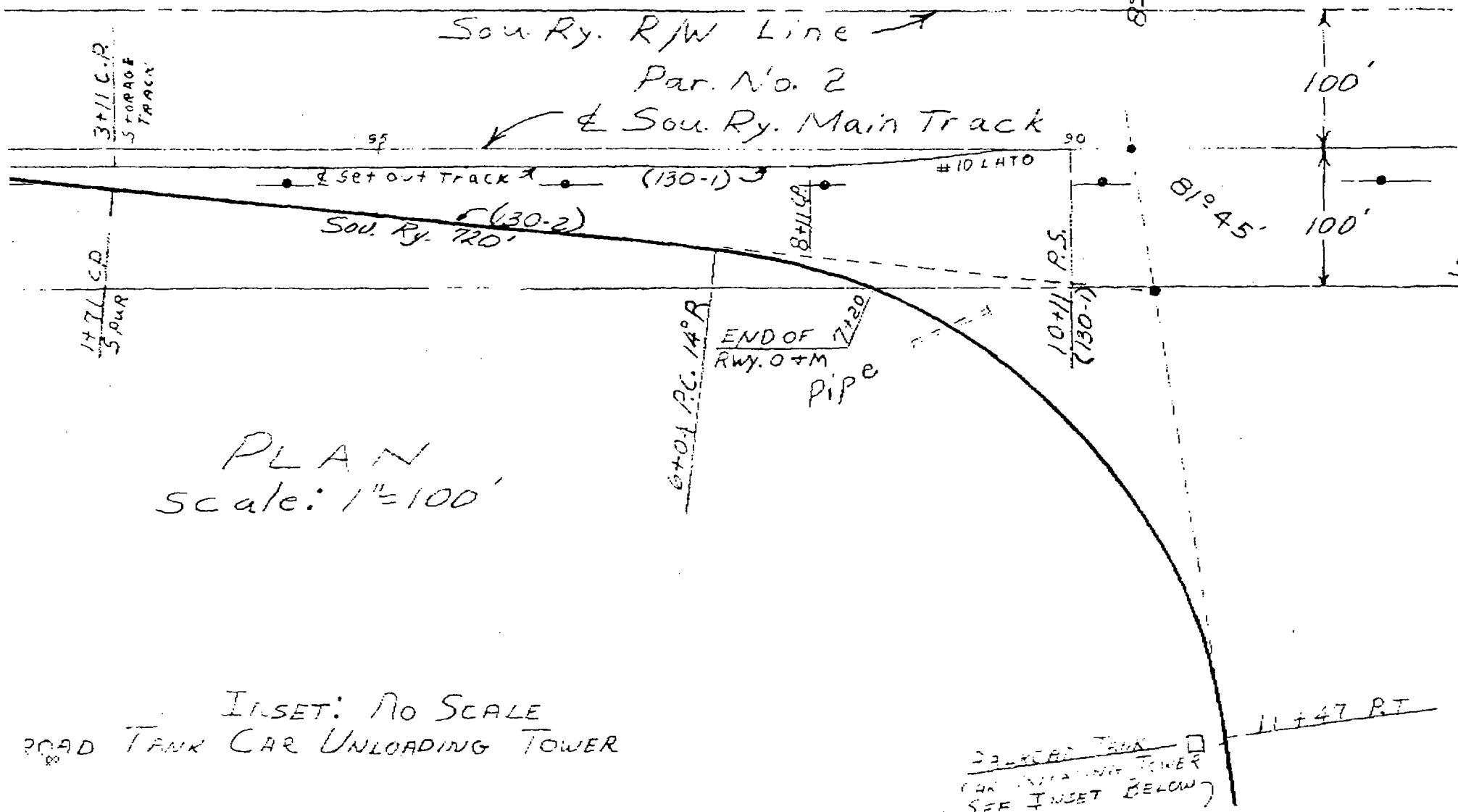
Richard P. Webb
Vice President

LAW DIVISION
Legally Reviewed
Initials
Date: 3/27/76

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— 3153' to M.P. 529-A —→



89+54.93 = P. 1

← To Memphis

100# Rail

200

#10 RHTO

#10 LH TO

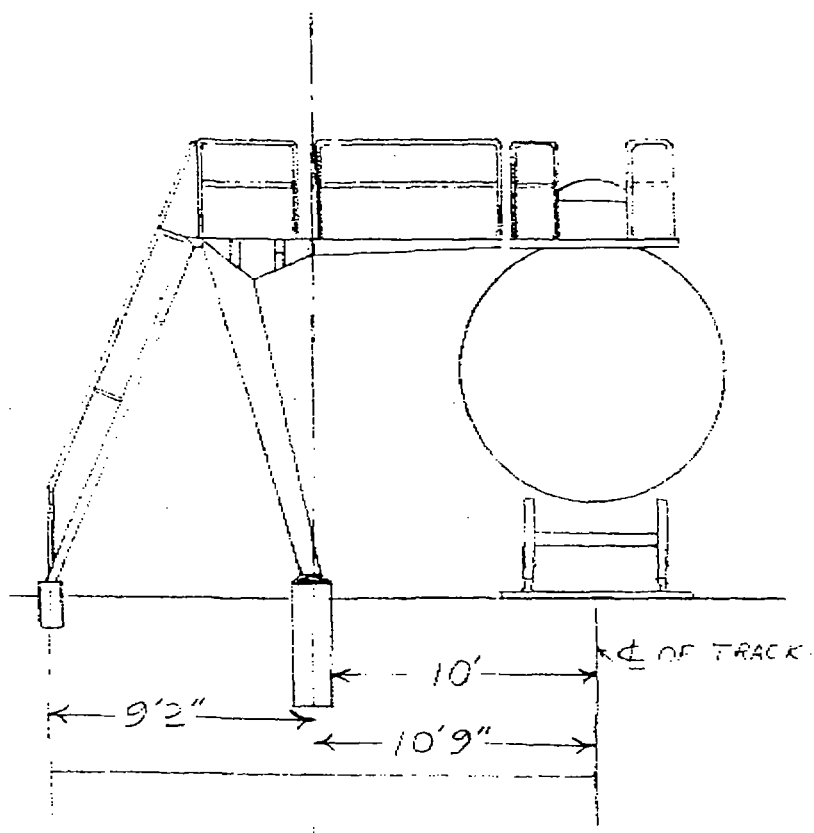
Vs 200+00 = 0+00
P.S. (130-1)

L+42.35 = 0+00 P.S.
(130-2)

PLAN
Scale: 1"=100'

6+04

INSET: NO SCALE
ROAD TANK CAR UNLOADING TOWER



RAILROAD TANK CAR UNLOADING TOWER
SEE INSET BELOW

11+47 P.T.

B₁

15+74 E.P.

Note: Track (130-2) serving Day & Night
Railway Co. owns & maintains 720 ft.
to R/W Line.
Day & Night own & maintain &

RAILROAD

